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T.R.A. DOCKET ROOM
May 4, 2004

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VIA HAND DELIVERY

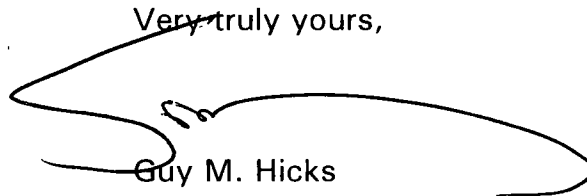
Hon. Deborah Taylor Tate, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238

Re: *In the Matter of Notice of Rulemaking Amendment of Regulations for
Telephone Service Providers*
Docket No. 00-00873

Dear Chairman Tate:

Enclosed are the original and fourteen copies of BellSouth's *Comments on
Proposed Rules*. Copies of the enclosed are being provided to counsel of record.

Very truly yours,



Guy M. Hicks

GMH:ch

BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

In Re: *In the Matter of Notice of Rulemaking Amendment of
Regulations for Telephone Service Providers*

Docket No. 00-00873

BELLSOUTH TELECOMMUNICATIONS, INC.'S
COMMENTS ON PROPOSED RULES

During the oral comments in Docket 00-00873 on April 8, 2004, several questions arose with regard BellSouth's practice and procedures in other states. The following comments address those questions and our concerns about several provisions in the proposed rules.

1. BellSouth's Emergency Continuity Tariff has been filed in Florida, Kentucky and South Carolina. That tariff explicitly states that it applies in those situations where a reseller abandons its end users, and BellSouth's intent in filing such tariffs was to address those situations. In particular, these tariffs were intended to be used only in situations in which a reseller will stop serving an unusually large group of customers. In cases of smaller customer groups, the tariffs are not needed.

2. BellSouth negotiates resale agreements with every reseller with whom it does business. These agreements contain commercially-negotiated terms and conditions that address the situation where a reseller fails to maintain its account in accordance with the requirements of the agreement. Furthermore, such agreements are filed for approval by the TRA. Therefore,

these proposed rules can only interfere with the provisions of agreements that BellSouth and resellers have voluntarily negotiated and which have already been reviewed and approved by the TRA.

3. BellSouth's Emergency Continuity Tariffs are filed and effective in Florida, Kentucky and South Carolina. BellSouth's experience in these states has informed BellSouth's decisions regarding use of such tariffs elsewhere in the region.

4. BellSouth initially filed a tariff addressing continuity of service in Florida to address a situation with one reseller serving a very large number of customers.¹ It was felt at that time that this tariff would provide for a more orderly way to handle the disconnection of such a large number of end users. The Florida tariff explicitly states that it applies in those situations in which BellSouth requests its application or the Commission chooses to order application of the tariff. The intent was that the use of the tariff would be limited to situations, like the one for which it was designed, involving very large customer bases.

5. In both Florida and South Carolina, the tariff has only been used as it was intended, namely, terminating service to a reseller with a large number of customers. Otherwise, the Commissions in these states permit BellSouth to disconnect a reseller according to the terms and conditions of the approved resale agreement between BellSouth and the reseller, without regard for the tariff.

¹ This reseller's customer base was roughly 300,000 end users. The reseller does not operate in Tennessee.

6. In Kentucky, BellSouth is expected to use the Emergency Continuity Tariff in all cases where a reseller is disconnected. BellSouth has found this requirement to be burdensome and unnecessary to handle the few situations that have arisen in that state. This unexpected use of the tariff has given BellSouth concerns about introducing similar tariffs elsewhere.

7. Section 3(a) of the proposed rules states that the underlying carrier is allowed to disconnect the reseller after a 48-hour notice and approval by the Authority chairman if there is evidence of fraud or abuse or unreasonable interference with the underlying carrier's network. This provision is problematic in that it requires the submission of "evidence" and implies some sort of emergency review and ruling by the Authority chairman. A 48-hour interval to meet those requirements is extremely unrealistic.

8. Section 3(b) of the proposed rules requires the reseller to give written notification to its customers, or make arrangements with the underlying carrier to place an intercept recording on the end-user's telephone line advising its customers that their service will be terminated on a day certain. Such notice shall be no less than ten days prior to the date of disconnection. With regard to the intercept option, BellSouth has several comments:

a. BellSouth is unaware of any way to place an intercept message on individual telephone lines to operate in this manner. Currently, the network directs a caller to an intercept message in a finite number of

well-defined situations. BellSouth is unaware of any way to use an intercept message to inform an end user in this manner described in this subsection.

b. BellSouth has used a service known as "BackTALK" to notify customers in limited situations. "BackTALK" refers to an automated dialing and announcement system that dials a customer's telephone number and plays a recorded message when the line is answered (either by a person or by an answering machine). "BackTALK" was not designed for this purpose, and it is certainly not a "cure all" for providing notice for the reasons discussed below. Furthermore, BellSouth cannot comment on the availability of this or a similar capability for other incumbent/underlying carriers.

c. Preparation of the "BackTALK" message and dialing arrangement requires approximately one week. If this method were used to satisfy the requirements of Section 3(b), the reseller would have to closely coordinate with BellSouth well in advance to provide the necessary information. This close coordination is highly unlikely since the reseller is, at this point, unwilling or unable to pay its bills to BellSouth. Moreover, during the week of work needed to initiate a "BackTALK" announcement, the list of numbers will become stale. This presents a serious problem and risk of customer confusion because it creates the potential for an end user to port its number to a new CLEC and still get a "BackTALK" message due to the time lag between getting a list of numbers and sending the message.

d. BellSouth's use of "BackTALK" in the context of reseller default has been very limited. To date, BellSouth has used "BackTALK" for one day in Florida before the reseller filed for bankruptcy and use of the recording was stopped. "BackTALK" was used once in North Carolina, Louisiana and Georgia, and four times in Kentucky.

e. Although costs have not been tracked in those instances where "BackTALK" has been used, it is without question that BellSouth would incur some cost to develop a "BackTALK" message, determine the telephone numbers to be dialed with this message, and implement the "BackTALK" message. The proposed rules fail to provide the underlying carrier with any means of recovering any of the costs that would be incurred to effectuate the rule. Instead, it appears to presume such notice services will be provided by BellSouth free of any charge.

f. In addition to the foregoing concerns, there are numerous regulatory issues not addressed by the proposed rules relating to the use of a "BackTALK"-type automated notice service. "BackTALK" is a system in which a pre-recorded message is played to an end user who is reached by an automatic dialing device. As the TRA is aware, the use of auto dialing equipment and the placing of unsolicited calls to end users is the subject of both federal and state law. No provision is made in the rules to address the conflicts between the requirements of the rule and the requirements that must be followed when using auto dialing equipment to place unsolicited calls to end users pursuant to federal and state law. As an example, federal

law requires that any pre-recorded message played over the telephone on a call placed with an auto dialing machine must identify the entity on whose behalf the call is made. BellSouth objects to being required to state that a message of this type is being made on its behalf under these circumstances for several reasons. First, BellSouth is not, of its own volition, making such a call. Second, BellSouth anticipates that its competitors may object to BellSouth being identified or highlighted as an alternative carrier through the use of such message. In addition, the reference to BellSouth would be confusing to end users who have a business relationship with a reselling carrier and not with BellSouth. The only way BellSouth can avoid identifying itself on a BackTALK pre-recorded message would be to obtain a waiver of the federal do-not-call rules from the FCC. The FCC, however, has been unwilling to grant such a waiver in the past.

9. Section 4(c) of the proposed rules requires the underlying carrier to notify the reseller's customers seven days prior to terminating the reseller's service and permits the underlying carrier to recover the costs associated with this notice from the reseller. BellSouth has the following comments on this provision:

a. Although BellSouth has not yet attempted to calculate the costs that would be incurred to provide this notice, it is without question that some costs will be incurred. Furthermore, recovery of these costs from the reseller is highly unlikely when the reseller already has refused to pay its bills to BellSouth. In short, the rule requires underlying carriers – who are

already facing risk of non-payment – to incur further expenses due to the reseller's failure. Forcing underlying carriers to provide these services without certainty of payment is the equivalent of forcing the underlying carrier to extend credit to a reseller who has already defaulted on other debt.

b. Providing for the recovery of BellSouth's costs from the new carrier or from the end user is equally unhelpful. In either instance, the end user or the new carrier may object to the payment of such charges and would have no contractual obligation to pay such charges to BellSouth. In such a scenario, the collection of such charges would be difficult at best. Moreover, contact from the underlying carrier to collect such charges would be confusing for end users who are not obtaining service from that carrier.

c. BellSouth has no way to know whether or not the reseller has fulfilled its obligation to notify its customers as required in this section. Therefore, the rule would require BellSouth to develop and implement some sort of monitoring process to determine compliance by the reseller. Furthermore, because of the time required to prepare and issue such a notice, BellSouth must either begin preparation of its own notice earlier or run the risk of failing to issue the notification in time, should the reseller fail to issue its own notice. This scenario causes BellSouth to incur additional costs whether or not the reseller complies with this notification requirement and to take on a regulatory-style monitoring function which is not BellSouth's responsibility and for which BellSouth has not been compensated.

d. Finally, as the underlying carrier, BellSouth has limited information about the reseller's customers, namely the customer's telephone number, service address and the services provided at that address. BellSouth will not necessarily have the billing address (where the customer has instructed the service provider to send the bill). Therefore, in the context of a written notice, BellSouth may not send the notice to the proper address and must rely on the reseller to provide this information. These problems mean that achieving actual notice is unlikely – although incurring the cost is a certainty.

10. Section 4(e) of the proposed rules requires the underlying carrier to provide basic local exchange service to customers of the reseller for at least fourteen days following the disconnection of the reseller's service, or until the customer selects another provider of local service, whichever is less. If the customer selects a new service provider, the underlying carrier may charge the new provider for the service at a rate set forth in the tariffed Emergency Continuity Service Plan approved by the Authority. However, BellSouth has limited ability, at this time, to back bill a CLEC for all charges incurred by these end users. Therefore, BellSouth would be left with no way to recover the charges for this extended service. This provision is simply a rule unconstitutionally requiring BellSouth to provide free services, and such takings are not permitted under either the U.S. or Tennessee Constitutions.

11. Section 4(f) requires the underlying carrier to incur the expense of contacting any remaining customers to notify them of the temporary change in service provider during the transition period described in subsection (e). This requirement imposes yet another cost on the underlying service provider with no means to recover any of that cost. In addition, the reseller's customer base may be fluctuating significantly during this period, making the job of identifying and contacting each remaining customer extremely difficult.

12. BellSouth has limited data on end user activity from the few instances where this tariff has been invoked in other states. The only available data came from the experience with one relatively small reseller. BellSouth does not routinely track this information and has not thoroughly analyzed the data, but it appears that, in this case, less than five percent of end users selected BellSouth as their service provider.

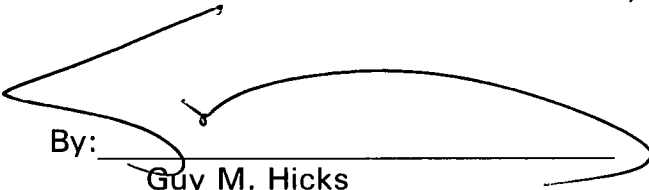
13. During oral arguments, BellSouth was asked about the provision of "soft dial tone" for the end users of a reseller who has been disconnected. This "soft dial tone" would permit an end user to only dial emergency numbers (such as "911") and BellSouth's business office (to the exclusion of the business offices of other service providers). BellSouth has provided "soft dial tone" on its retail customers' lines. When BellSouth places "soft dial tone" on a line, the network facilities from the Central Office to the end user's premises remain dedicated to that end user. If those facilities are subsequently needed to provide service to a different end

user, the "soft dial tone" will be disabled and the facilities will be available for alternate use. Requiring BellSouth to maintain a "soft dial tone" status for the end users of a defaulting CLEC could result in BellSouth's retail customers – and the customers of other CLECs using BellSouth's facilities and paying timely for them – being inconvenienced by a lack of facilities due to facilities being held in a "soft dial tone" status resulting from the reseller default. Because of the consistently changing needs for facilities to respond to customer demand, BellSouth cannot make any guarantees as to where and when "soft dial tone" can be provisioned. Therefore, BellSouth believes that "soft dial tone" is not an appropriate requirement when disconnecting a reseller.

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.

By:



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CERTIFICATE OF SERVICE

I hereby certify that on May 4, 2004, a copy of the foregoing document was served on the parties of record, via the method indicated:

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A handwritten signature in black ink, appearing to read "Dale Grimes", is written over a horizontal line. The signature is stylized with a large loop and a sharp upward stroke.